



New South Wales

# Shop Trading Amendment Bill 2009

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Shop Trading Act 2008* (the *Principal Act*) and the *Shop Trading Regulation 2009* as follows:

- (a) to limit the circumstances in which exemptions to enable trading on restricted trading days (such as Christmas Day) may be granted and to restrict the right to apply for such an exemption to occupiers of shops,
  - (b) to make other amendments relating to applications for such exemptions,
  - (c) to enable third parties to appeal to the Administrative Decisions Tribunal for reviews of decisions relating to such exemptions,
  - (d) to enable inspectors to require records relating to shop employees and business receipts to be produced for enforcement purposes,
  - (e) to render void any provision of a lease (or related agreement or arrangement) that requires an occupier of a shop to keep the shop open on a restricted trading day,
  - (f) to make other amendments of a minor or consequential nature and to enact savings and transitional provisions consequent on the enactment of the proposed Act.
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## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

### **Schedule 1      Amendment of Shop Trading Act 2008 No 49**

**Schedule 1 [1]** amends the long title of the Principal Act to change the reference to de-regulation of shop opening hours and restricted trading days to fair regulation of shop opening hours and restricted trading days.

**Schedule 1 [2]** amends section 3 of the Principal Act to update a definition and inserts a definition of *Departmental website*.

**Schedule 1 [3]** substitutes sections 10 and 11 of the Principal Act and inserts new sections 11A–11C. Proposed section 10 re-enacts the current provision relating to exemptions from shop trading restrictions given by the Director-General of the Department of Services, Technology and Administration (the *Director-General*) with some changes. The new section requires the Director-General not to grant an exemption unless satisfied that it is, in the exceptional circumstances of the case in the public interest to do so, after considering specified matters. It removes the discretion of the Director-General to consider any other matters he or she thinks fit and to grant an exemption without an application being made. An application may now only be made by the occupier of a shop. It also expressly requires the Director-General to consider the likely effect of the exemption on small businesses. Proposed section 11 requires applications for exemptions to be made no later than 28 days before the day of the exemption. Proposed section 11A requires the Director-General to publish exemption orders and reasons for decisions on exemption applications on the website of the Department of Services, Technology and Administration. Proposed section 11B deems applications to be refused (for the purpose of applying for a review) if a decision has not been made after 40 days. Proposed section 11C applies the provisions relating to applications for exemptions to applications to amend or revoke exemption orders.

**Schedule 1 [4]** amends section 12 of the Principal Act to provide for the review by the Administrative Decisions Tribunal of a determination by the Director-General to refuse to amend an exemption.

**Schedule 1 [5]** amends section 12 of the Principal Act to allow third parties, having sufficient interest in a matter, to appeal to the Administrative Decisions Tribunal for a review of a determination by the Director-General to refuse to grant, amend or revoke an exemption or as to the conditions of an exemption.

**Schedule 1 [6]** amends section 15 of the Principal Act to confer on inspectors additional powers to require documents to be produced for the purposes of investigating possible contraventions of that Act or the regulations under that Act.

**Schedule 1 [7]** amends section 20 of the Principal Act to update a reference.

**Schedule 1 [8]** inserts proposed section 22A into the Principal Act. The proposed section makes a provision of a lease void to the extent to which it requires the occupier of a shop to keep the shop open on a restricted trading day. The proposed section also extends to provisions in other arrangements or agreements between occupiers and owners or lessees of shop premises.

**Schedule 1 [9]** amends Schedule 2 to the Principal Act to enable regulations containing savings or transitional provisions to be made as a consequence of the enactment of the proposed Act.

**Schedule 1 [10]** amends Schedule 2 to the Principal Act to make it clear that the provision preventing employees from being coerced into working on restricted trading days applies to previous exemptions continued under that Act. The amendment also enables occupiers of shops subject to such an exemption to apply for an order amending the exemption.

**Schedule 1 [11]** amends Schedule 2 to the Principal Act to insert savings and transitional provisions consequent on the enactment of the proposed Act.

## **Schedule 2      Amendment of Shop Trading Regulation 2009**

**Schedule 2** amends the *Shop Trading Regulation 2009* to require the Director-General to publicly exhibit applications to exempt shops from the prohibition on trading on restricted trading days for 21 days and to consider any public comment received during the exhibition period. The Schedule also prescribes the form for an exemption application.